



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 29, 1991

Mr. Allen Beinke
Executive Director
Texas Water Commission
P.O. Box 13087 Capitol Station
Austin, Texas 78711-3087

OR91-380

Dear Mr. Beinke:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11548.

You have received a request for copies of documents relating to an investigation conducted by the Texas Water Commission (TWC) of alleged unauthorized disposal sites in Liberty and Harris Counties, to include "shipping tickets" contained in the Executive Director's preliminary report, results of samplings, photographs, and all other documents TWC used in reaching its conclusions. You claim that the information requested is excepted by sections 3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act.

We have considered the exceptions you claimed and have reviewed the documents at issue. Previous open records decisions issued by this office resolve your request. Section 3(a)(8) excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

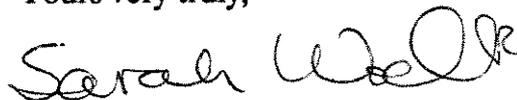
V.T.C.S. art. 6252-17a, § 3(a)(8). Where an incident involving allegedly criminal conduct is still under active investigation, section 3(a)(8) may be invoked by any proper custodian of information which relates to the incident. Open Records Decision No. 474 (1987). Attorney General Opinion MW-575 (1982) held that

"[w]hen an investigatory file is open . . . and there exists a reasonable probability of criminal prosecution, even a non-law enforcement agency may be able to claim the section 3(a)(8) exception as to that file." *See also* Open Records Decision Nos. 297; 286 (1981). Accordingly, all requested information contained in "Enclosure A" may be withheld under section 3(a)(8).

Some information, however, may not be withheld under section 3(a)(8). If information has been publicly disclosed already, it may ordinarily not be withheld in the future. Open Records Decision No. 436 (1986). Likewise, voluntary release of information to any member of the public makes that information subject to further disclosure. Open Records Decision No. 518 (1989). Accordingly, all of "Enclosure B," to include the "Notice of Executive Director's Preliminary Report and Petition for a Texas Water Commission Order Assessing Administrative Penalties and Requiring Certain Actions of Applied Coating Services, Inc.;" the Executive Director's Preliminary Report; and a proposed Order for the Commission's approval, having already been disclosed to the public, may not be withheld under section 3(a)(8) or any other exception you claim. Because we are able to resolve your request under section 3(a)(8), we need not address the applicability of sections 3(a)(1), 3(a)(3), and 3(a)(11).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-380.

Yours very truly,



Sarah Woelk

Assistant Attorney General

Opinion Committee

SW/GCK/lb

Ref.: ID# 11548

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